

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

July 28, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

02od-513

Oahu

Amend Prior Board Action of January 24, 2003, under Agenda Item D-6, for Grant of Term Non-Exclusive Easement to Edwin Lau, Kaneohe, Oahu, TMK: 1st/ 4-6-01:27 Seaward

REMARKS:

On January 24, 2003, under agenda item D-6, the Board authorized the issuance of a term, non-exclusive easement to Edwin Lau for an encroachment that includes a seawall, stairs and reclaimed land. A copy of the subject-approved submittal is attached as Exhibit A.

An appraisal, contracted by the State but paid by the applicant, was received and approved by the Department of Land and Natural Resources on July 25, 2003 but was rejected by Mr. Lau. However, he did not appoint another appraiser to pursue the arbitration process. The property was subsequently sold to John P. Dunham and Dana Lynn Kawano, as Trustees of the Dunham/Kawano Trust, whose address is 199 State Street, San Mateo, California 94401. The new owners want to resolve the encroachment, and request Board approval for a grant of easement to be issued in their name.

Staff recommends a new appraisal be done on this request since the previous one is no longer relevant due to changing market conditions.

The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION:

That the Board amend the prior Board action of January 24, 2003, under agenda item D-6 as follows:

1. Request a new appraisal based on the July 28, 2006 valuation date, to be paid for by the applicant;
2. Replace Edwin Lau, Applicant, with John P. Dunham and Dana Lynn Kawano, as Trustees of the Dunham/Kawano Trust,


ITEM D-5

July 28, 2006

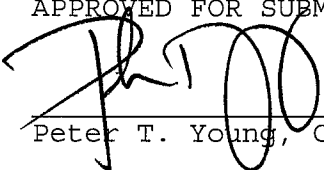
Applicant; and

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Al Jodar  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson

D-6

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

January 24, 2003

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 02od-513

OAHU

Grant of a Term Non-exclusive Easement for Seawall, stairs and fill land to Edward Lau, Kaneohe, Koolaupoko, Oahu, Tax Map Key (1) 4-6-01:27

APPLICANTS:

Edward Lau, unmarried, tenant in severalty, whose mailing address is 46-069 Lilipuna Road, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaneohe located seaward of (1) 4-6-01:27 situated at Kaneohe, Koolaupoko, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

5,929 square feet, more or less, to be determined by Survey Division, DAGS.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO x

Item D-6

**EXHIBIT "A"**

CURRENT USE STATUS:

Unencumbered

CHARACTER OF USE:

Right, privilege and authority to use, repair and maintain seawall, stairs and fill land purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

LEASE TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During recent inspection, Coastal Land Program (CLP) staff's research determined the subject seawall was established before 1974 i.e. prior to the enactment of the environmental assessment law.

DCCA VERIFICATION:

Individual, not applicable

APPLICANTS REQUIREMENTS:

Applicants shall be required to

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey map and description according to State DAGS standards and at Applicant's own cost.

REMARKS:

Mr. Lau has an offer on the property and hopes to have a closing soon after the Board approval. The survey map revealed the encroachment. This subject property does not have a pier and is not part of the Kaneohe Bay Piers Amnesty Program.

The Coastal Land Program (CLP) staff has determined that the issuance of an easement for the encroaching portion of the seawall and reclaimed land would have no adverse impacts on natural resources, including beach resources and therefore has no objections to the issuance of an easement (see CLP letter, Exhibit C). According to the Planning Office correspondence, the previous land owner applied for a CDUA but because it was not acted upon in a timely manner by Staff, the then Board Chairperson wrote that his

January 24, 2003

application was automatically approved on February 22, 1977 and the Department of Land and Natural Resources staff does not consider this encroachment a Conservation District violation.

Staff recommends the Board impose a fine of \$500 for the encroachment upon public lands pursuant to Section 171-6(12) HRS, since the encroachment was done without proper State Government authorization. The CLP does not consider this encroachment a Conservation District violation as an automatic approval was applied under Section 183-41.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 55-year term non-exclusive easement for the seawall, stairs and fill land purposes to Edward Lau under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Impose a fine of \$500 for encroachment upon public lands without Government authorization pursuant to Section 171-6(12) HRS.

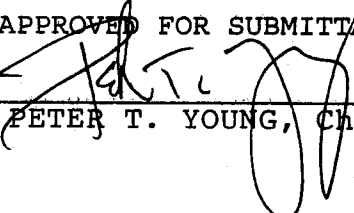
Respectfully Submitted,

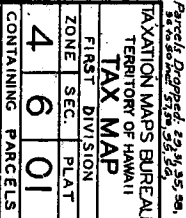


Al Jodan  
Land Agent

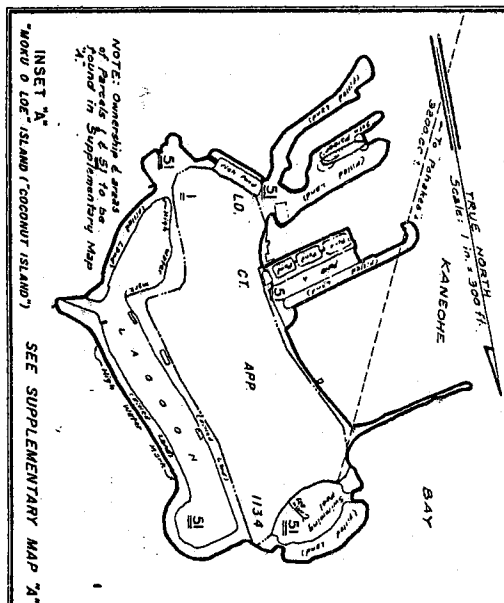
*WGM*

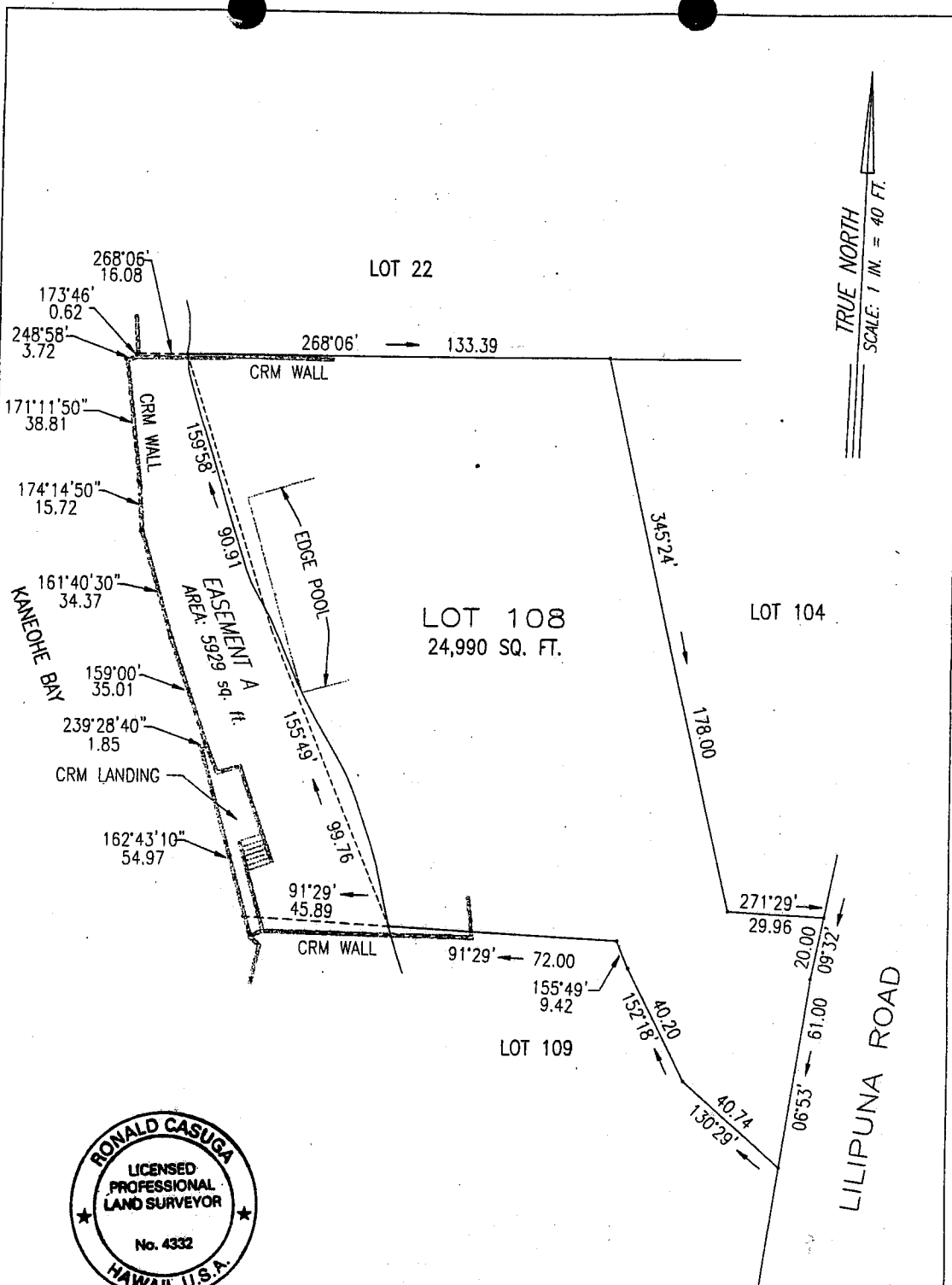
APPROVED FOR SUBMITTAL:

  
PETER T. YOUNG, Chairperson



# EXHIBIT A





This work was prepared by me  
or under my supervision

*Ronald Casuga*

Licensed Professional Land Surveyor  
Certificate Number 4332

### EASEMENT AREA

LOT 108

OF LAND COURT APPLICATION 1100

(MAP 22)

AT HEEIA, KOOLAUPOKO, OAHU, HAWAII

TAX MAP KEY: 4-6-01:27

HONOLULU, OAHU, HAWAII  
3816

TOWILL, SHIGEOKA & ASSOCIATES, INC.  
LAND SURVEYORS

1270 QUEEN EMMA STREET  
OCTOBER 12, 2002

**EXHIBIT B**

LINDA LINGLE  
GOVERNOR



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**  
P.O. Box 621  
HONOLULU, HAWAII 96809

DEC 20 2002

GILBERT S. COLOMA-AGARAN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

LINNEL T. NISHIOKA  
DEPUTY DIRECTOR FOR  
THE COMMISSION ON WATER  
RESOURCE MANAGEMENT

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE  
COMMISSION  
LAND  
STATE PARKS

REF:PB:MM

File Number Encroachment: OA-03-21

Edward Lau  
46-069 Lilipuna Road  
Kaneohe, HI 96744

Dear Mr. Lau:

**Subject: Shoreline Encroachment (Seawall and Fill Area) at 46-069 Lilipuna Road, Kaneohe, Oahu [TMK: 1-4-6-01:027]**

Land Division, Planning Branch staff has reviewed the submitted documentation for this case. The encroachment in question is a seawall located Makai of the homeowner's property line. This structure is Makai of the metes and bounds of the parcel in question and thus constitutes an encroachment onto State of Hawaii land. The area of the alleged encroachment is approximately 5929 square feet. Staff has reviewed State records that indicate the Shoreline was certified on June 29, 1973. Furthermore, correspondence to the Department of Land and Natural Resources dated April 11, 1974 indicates the wall was not in existence in 1973 when the shoreline was certified, and was constructed nine months later in violation of County and State laws. However, a letter from the Department to John Legge dated February 22, 1977 indicates,

"From materials which we received earlier, we understand that you filed an application with the Department of Land and Natural Resources, Division of Land Management, in November 1973, requesting permission to construct the seawall. We further understand that you were assured by a staff member of the Department, who has since left for the Mainland, that the application would be forwarded to the Planning Office for processing and action by the Land Board. However, it has been discovered, no application concerning the seawall was received nor processed by the Planning Office.

In light of the foregoing events and the information you furnished, we have determined that your request/application filed, as such, with the Department on



1973 is automatically approved as stipulated by Section 183-41 of the Hawaii Revised Statutes." (Exhibit 1).

Due to the unusual circumstances surrounding this case, and the automatic approval of the seawall and fill area on February 22, 1977, the Department of Land and Natural Resources does not consider this encroachment a Conservation District violation.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted. On November 26, 2002 staff visited the site to investigate the encroachments and to gather reconnaissance information to support a recommendation for either removal of the encroachments or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

Surrounding Land Uses:

It was observed during the site visit that surrounding uses are residential. The Lilipuna Road subdivision shares a contiguous seawall.

Beach Resources:

CLP staff inspected the area. The tidal area is a shallow mud flat.

Public Access:

There is no public access to the beach.

Effect of Removing the Encroachment on:

*Beach Resources:* The removal of the encroachment would have no impact on public access. Public recreation such as fishing, diving and boating takes place offshore of the parcel.

*Public Access:* CLP staff has determined that public access would not be enhanced by removal of the encroachment.

*Affect on Adjacent Properties:* Removal of this portion of the wall would affect the two abutting landowners as the wall in question also fronts their parcels.

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement for the seawall and fill area would have no adverse impacts on natural resources, including beach resources. These improvements have existed since 1973 and became defacto approved according to the February 22, 1977 letter from the Department. Therefore, the Planning Branch has no objections to an easement request being processed. The Oahu District Land Office calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they may be subject to an administrative penalty for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Matthew Myers, of the Land Division, Planning Branch at 587-0382. Please contact the Oahu District Land Agent at 587-0433 regarding the processing of an easement.

Aloha,



Dierdre S. Mamiya  
Administrator

Cc: Oahu Board Member  
Oahu District Land Office  
Chairperson's Office  
Patti Edwards, DOCARE